



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-786

Dear Mr. Karakashian:

The Texas Department of Public Safety ("DPS") received a request from an attorney on behalf of his client for certain information. You ask if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 26100.

According to information provided to this office, the requestor's client was charged with driving while intoxicated ("DWI"). The requestor seeks the following information from DPS:

- (1) A copy of the intoxilyzer slip for the breath test taken from his client;
- (2) Copies of the intoxilyzer slips for the ten breath tests prior to and after his client's test;
- (3) Documents pertaining to or showing that the machine operator was supervised by someone with a superior knowledge in the operation of the machine and the "scientific theory of analyses and extrapolation of breath test[s];"
- (4) Log book entries pertaining to the requestor's client and the ten persons who had breath tests prior to and after his client's test;

(5) Information about the maintenance tests and inspections of the machine made prior to his client's breath test and after the test; and

(6) Information about the machine's failure to register information properly or its failure to perform properly in the 90 days prior to his client's breath test.

You state that DPS does not have information that is responsive to request numbers 2 and 6 concerning the test slips and machine failures. You have submitted to this office for review representative samples of the information responsive to request numbers 1, 2, and 5.¹

You contend that the requested information is excepted from disclosure under section 552.108, which excepts from disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . ; [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. Open Records Decision No. 127. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision Nos. 216 (1978) at 4; 518 (1989).

After a review of the representative samples, we conclude that section 552.108 excepts this information from required disclosure.² We note that because section 552.108

¹You submitted documents in regard to request number three. These documents do not appear to be responsive to the request.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

is discretionary with the governmental body claiming the exception, the DPS may choose to voluntarily release the requested information. We are resolving this matter with an informal letter ruling rather than with a published open records decision.

If you have questions about this ruling, please contact our office.³

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 26100

Enclosures: Submitted documents

cc: Mr. Philip Bozzo, Jr.
Attorney at Law
405 South Presa
San Antonio, Texas 78205
(w/o enclosures)

³Since we have determined that the documents at issue may be withheld under section 552.108, we do not need to address your argument under section 552.103(a).